STATUS OF CLAIMS

Claims 1 - 82 are pending.

Claims 1 - 82 stand rejected by the Examiner.

Claims 1, 12, 24, 36, 48, 51, 54-56, 67, 79 and 81 have been amended, without prejudice, herein.

REMARKS

Reconsideration of the present Application is respectfully requested.

Rejections based on 35 U.S.C. § 103 (a)

Claims 1-82 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Sinclair

(U.S. Patent No. 6,527,641) and Goldberg (U.S. Patent No. 6,712,702). Applicant respectfully

traverses the rejection of claims 1-82 for at least the following reasons.

35 U.S.C. 103(a) sets forth in part:

> [a] patent may not be obtained though the invention is not
> identically disclosed or described as set forth in section 102 of this title,
> if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have
> been obvious at the time the invention was made to a person having
> ordinary skill in the art to which said subject matter pertains.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there

must be some suggestion or motivation, either in the references themselves or in the knowledge

generally available to one of ordinary skill in the art, to modify the reference or to combine

reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior

art reference (or references when combined) must teach or suggest all the claim limitations. The

teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).*

Applicant has amended Claim 1 to read, in part, "means for storing gaming profile data relating to each of said users..." Applicant has also amended Claims 12, 24, 36, 48, 51, 54-56, 67, 79 and 81 to include the limitation of gaming profile data. Support for this limitation can be found within the Specification at pages 20-21, paragraph 58, wherein it teaches, "The user profiles may contain any and all of the following information about the user: credit card, and/or billing; affinity group memberships; numeric or other rankings of interest; portable communications device make, model, and capabilities; game applications resident on the user's portable communications device; skill level; achievement level; user's virtual reality character characteristics; portable communications device usage level; occupation; income level; education level; residence or geographic area; age; sex; religion; frequent locations; device characteristics; and/or identification of other users precluded from communicating with the user". Applicant respectfully submits the cited references, either separately or in combination, fail to either teach or suggest at least each of the limitations of Claims 1, 12, 24, 36, 48, 51, 54-56, 67, 79 and 81, as currently amended by Applicant.

In each of the rejections for independent Claims 1, 12, 24, 36, 48, 51, 54-56, 67, 79 and 81 regarding storing, receiving, accessing, or modifying the profile data, the Examiner cites Sinclair at col. 10, lines 53-60 and col. 14, lines 35-42. For example, in rejection of Claim 1, Examiner asserts that "Sinclair teaches storing profile data relating to each of the users, the means for storing being operatively connected to the means for providing wireless communications." Applicant respectfully submits that Sinclair describes ""mobile usage profiling" information, namely information

regarding the patterns of use of mobile communications by the player 100... Such profile information includes, for example, the fact that player 100 is currently actually located in the city of Los Angeles." (col. 10, lines 56-62). Applicant respectfully submits this teaches only of information regarding usage patterns, and not to all aspects helpful to *gaming*, such as those described in the Specification (pages 20-21, paragraph 58) above, for example. For example, aspects important to wireless gaming necessarily include game type, skill level, and a great myriad of wireless connectivity types, such as TDMA, CDMA, and GSM, each of which connectivities may vary by cell tower type, speed of travel, and the like. As such, for "gaming", all such profile information must be monitored. A highly skilled player should not lose a game against lesser skilled players, all of which players are using a CDMA connection, just because the highly skilled player is between cell towers and is thus getting spotty reception, for example.

Also, in each of the rejections for independent Claims 1, 12, 24, 36, 48, 51, 54-56, 67, 79 and 81 regarding teaching a system for creating an affinity group of device users, the Examiner cites Goldberg at col. 5, lines 42-45. While Goldberg describes a system using an internet website to "partition the population of players into competitive groups" (col. 5, lines 42-45), it does not teach grouping with regard to wireless gaming aspects, including skill level, which are different in a wireless environment. For example, wireless connectivity, or phone button activation sensitivity, may vary wildly. The internet, however, has standard connectivities, and thus lacks those complexities of grouping specific to a wireless environment.

Further, Examiner asserts in each of the rejections for independent Claims 1, 12, 24, 36, 48, 51, 54-56, 67, 79 and 81 that it would have been obvious to one of ordinary skill in the art at the time of the invention was made to make the device adapt to include creating an affinity group of portable communications device users, comparing profile data of different ones of the users, and associating users with the affinity group based on the profile data comparison to thereby create the

group, and comparing and associating being operatively connected to the means for storing *because this would allow for a network of multiple users to efficiently communicate without regard to geographic or physical location*. (Emphasis added). Neither Sinclair nor Goldberg teach, or even suggest for that matter, a network of multiple users to efficiently communicate without regard to geographic or physical location. Again, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on Applicant's disclosure. *In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).* As this is what is disclosed by Applicant and not the cited references, either individually or in combination, the cited references do not teach or suggest each of the limitations of Claims 1, 12, 24, 36, 48, 51, 54-56, 67, 79 and 81.

Accordingly, Applicant submits at least Claims 1, 12, 24, 36, 48, 51, 54-56, 67, 79 and 81 are patentably distinguishable over the prior art of record. Applicant further submits that Claims 2-11, 13-23, 25-35, 37-47, 49-50, 52-53, 57-66, 68-78, 80 and 82 are similarly distinguishable over the prior art of record, at least by virtue of their ultimate dependency from a patentably distinct base Claims 1, 12, 24, 36, 48, 51, 54-56, 67, 79 or 81.

CONCLUSION

Wherefore, Applicant believes he has addressed all outstanding grounds raised by the Examiner and respectfully submits the present case is in condition for allowance, early notification of which is earnestly solicited. Should there be any questions or outstanding matters, the Examiner is cordially invited and requested to contact Applicant's undersigned attorney at his number listed below.

Respectfully submitted,

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